

**CHILD AND FAMILY SERVICES AGENCY****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Child and Family Services Agency (“CFSA”), pursuant to section 108 of the Newborn Safe Haven Emergency Act of 2010 (“Act”), effective March 1, 2010 (D.C. Act 18-321; 57 DCR 1842), section 108 of the Newborn Safe Haven Act of 2009, effective May 27, 2010 (D.C. Law 18-158), and Mayor’s Order 2009-146, dated September 1, 2009, hereby gives notice of the adoption on an emergency basis of the following new Chapter 83 of Title 29 of the District of Columbia Municipal Regulations (“DCMR”). This new chapter, entitled “Safe Haven for Newborns”, establishes the rules and procedures through which parents may surrender their newborns to authorized receiving facilities under the Act. Emergency action is based upon an immediate need in the District of Columbia to implement the Act to ensure the safety and protection of newborns whose parents wish to relinquish their parental rights. The emergency rules were adopted and became effective on May 10, 2010. They will remain in effect for one hundred twenty (120) days unless superseded by another rulemaking notice.

The Director also gives notice of his intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, and following the forty-five (45) day period of review required under section 108 of the Act. Pursuant to that section, the proposed rules will be submitted to the Council and will become effective upon the Council’s approval of the rules by resolution or the expiration of the Council’s forty-five (45) day review period, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

**Title 29 DCMR is amended by adding the following new Chapter 83:**

**CHAPTER 83      SAFE HAVEN FOR NEWBORNS**

- 8300    PURPOSE
- 8301    ANONYMITY OF PARENT
- 8302    ACTIONS TAKEN BY AUTHORIZED RECEIVING FACILITY
- 8303    HOSPITAL INTAKE PROCEDURES FOR A SURRENDERED NEWBORN
- 8304    ACTION TAKEN BY CFSA UPON NOTIFICATION OF A SURRENDERED SAFE HAVEN  
NEWBORN
- 8305    RELINQUISHMENT OF PARENTAL RIGHTS
- 8306    INFANTS WHO ARE NOT ELIGIBLE FOR SURRENDER UNDER THE NEWBORN SAFE  
HAVEN ACT
- 8307    IMMUNITY FROM LIABILITY
- 8308    SIGNAGE
- 8399    DEFINITIONS

**8300 PURPOSE**

- 8300.1 The purpose of this chapter is to provide for the health, safety, and welfare of newborns by providing a safe place for them to be surrendered by a parent who is a resident of the District of Columbia.

**8301 ANONYMITY OF PARENT**

- 8301.1 A parent who surrenders a newborn eligible for surrender under the Act at an authorized receiving facility has the right to remain anonymous and shall not be required to disclose his or her name or address.

**8302 ACTIONS TAKEN BY AUTHORIZED RECEIVING FACILITY**

- 8302.1 When a newborn is surrendered to an authorized receiving facility, the facility shall make reasonable efforts to obtain family and medical history from the surrendering parent. This information shall include personal information about the newborn and the surrendering parent, the identities and addresses of both parents, and information about the date, location and circumstances of the newborn's birth,
- 8302.2 The authorized receiving facility shall obtain an acknowledgment from the surrendering parent that the surrendering parent is a District of Columbia resident and shall advise the surrendering parent that District residence is necessary for the newborn to be eligible for surrender under the Act.
- 8302.3 The surrendering parent of a newborn eligible for surrender under the Act has the right to remain anonymous and to leave the authorized receiving facility at any time. This parent shall not be pursued by any person at the time of surrender.
- 8302.4 The authorized receiving facility shall provide information on adoption and counseling services to the surrendering parent.
- 8302.5 The authorized receiving facility receiving a newborn shall notify the Child and Family Services Agency ("CFSA") that a newborn has been surrendered within one (1) hour after the surrender. If the authorized receiving facility is unable to contact CFSA within one (1) hour of the surrender because of circumstances beyond its control, it shall contact CFSA as soon as possible.
- 8302.6 The authorized receiving facility shall complete an authorized receiving facility report relating to the surrender as accurately and completely as possible. At a minimum, the authorized receiving facility report shall be signed and dated and provide the following information:

- (a) The name of the employee receiving the surrendered newborn;
- (b) The name of the authorized receiving facility;
- (c) The date of the surrender;
- (d) The time of the surrender;
- (e) Family and medical information obtained, if any;
- (f) Whether the surrendering parent acknowledged that he or she is a resident of the District of Columbia;
- (g) The circumstances of the surrender;
- (h) The reason why a physician or the person receiving the newborn reasonably believes that the newborn is fourteen (14) days old or younger;
- (i) Whether the parent was provided with information on adoption and counseling; and
- (j) The reason, if any, as to why information on adoption and counseling was not provided to the parent.

8302.7 If a newborn appears to have been abused or neglected or if the newborn is not eligible for surrender under the Act, the authorized receiving facility shall follow normal procedures for reporting abuse or neglect.

8302.8 If a parent returns to the authorized receiving facility requesting return of the newborn, personnel shall advise the parent to contact CFSA's Post Permanency Unit.

### **8303 HOSPITAL INTAKE PROCEDURES FOR A SURRENDERED NEWBORN**

8303.1 When a newborn is surrendered to a hospital or transported to another hospital after being surrendered, each hospital shall treat and provide care for the newborn while the newborn is in its custody.

8303.2 The hospital where the newborn was surrendered shall:

- (a) Provide CFSA with a copy of the authorized receiving facility report on or before CFSA assumes physical custody of the newborn; and

- (b) Contact the CFSA Post Permanency Unit within one (1) hour after receiving the newborn.

8303.3 CFSA shall not assume physical custody of the newborn until it receives the authorized receiving facility report.

**8304 ACTION TAKEN BY CFSA UPON NOTIFCATION OF A SAFE HAVEN NEWBORN**

8304.1 Upon CFSA's receipt of the authorized receiving facility report, CFSA shall accept immediate care, custody, and control of the surrendered newborn from the authorized receiving facility, or the hospital where the newborn was transferred by the authorized receiving facility, as soon as possible, but no later than twenty-three (23) hours after the surrender.

8304.2 CFSA shall transport the surrendered newborn from the hospital to CFSA.

8304.3 CFSA shall place the surrendered newborn in a pre-adoptive home that is the first and best placement.

8304.4 Within ninety (90) days after surrender, CFSA shall attempt to identify, locate, and notify the non-surrendering parent by:

- (a) Requesting that the Metropolitan Police Department conduct a missing child search; and
- (b) Publishing a notice of surrender in at least one (1) newspaper that serves the District of Columbia metropolitan area at least once a week for three (3) successive weeks.

8304.5 The notices of surrender shall be published no earlier than thirty (30) days after surrender but no later than ninety (90) days after surrender.

8304.6 The notices of surrender shall include:

- (a) The place, date, and time of the surrender;
- (b) The sex, race, approximate age, and any identifying marks of the surrendered newborn;
- (c) Any other identifying information that CFSA has about the newborn and any additional information that CFSA considers necessary or useful; and
- (d) A statement that the non-surrendering parent's failure to notify CFSA, or other contact person set forth in the notice, of his or her

intent to exercise his or her parental rights and responsibilities within twenty (20) days after publication of the notice shall be deemed to be the non-surrendering parent's irrevocable consent to the termination of all parental rights and his or her irrevocable waiver of any right to notice of, or opportunity to participate in, any termination of parental rights proceedings involving the surrendered newborn.

**8305 RELINQUISHMENT OF PARENTAL RIGHTS**

8305.1 Surrender of a newborn pursuant to the Act shall constitute a relinquishment of the parental rights of the surrendering parent.

**8306 INFANTS WHO ARE NOT ELIGIBLE FOR SURRENDER UNDER THE NEWBORN SAFE HAVEN ACT**

8306.1 An infant is not eligible for surrender under the Act if the infant:

- (a) Is reasonably believed by a licensed physician or other person authorized to accept the surrender to be older than fourteen (14) days;
- (b) Appears to be abused or neglected;
- (c) Is surrendered by a person other than one of his or her parents;
- (d) Is surrendered by a parent who is not a District of Columbia resident; or
- (e) Is left somewhere other than an authorized receiving facility.

8306.2 If the infant is not eligible for surrender under the Act, the authorized receiving facility or other facility at which the newborn is left shall file a report of abuse or neglect with CFSA.

8306.3 If the infant is not eligible for surrender under the Act, the authorized receiving facility or other facility at which the newborn is left shall share with the Metropolitan Police Department and CFSA any identifying information it has about the person who brought the infant to the facility.

**8307 IMMUNITY FROM LIABILITY**

8307.1 An authorized receiving facility and its staff shall be immune from civil or criminal liability for the good faith performance of their responsibilities under the Act and this chapter.

**8308            SIGNAGE**

8308.1           CFSA shall post a sign in a conspicuous place on the exterior of each authorized receiving facility in the District. The sign shall state in plain terms that a newborn may be surrendered at the facility and shall provide information about how a person can determine whether a particular newborn has been surrendered.

**8399            DEFINITIONS**

8399.1           When used in this chapter, the following terms shall have the meanings ascribed:

“Act” - the Newborn Safe Haven Emergency Act of 2010, effective March 1, 2010 (D.C. Act 18-321; 57 DCR 1842), or any substantially similar successor legislation.

“Authorized receiving facility” - a hospital located in the District of Columbia.

“CFSA” - the Child and Family Services Agency of the District of Columbia.

“Newborn” - an infant that a licensed physician or other person authorized to accept the surrender reasonably believes is fourteen (14) days old or less.

“Surrender” - to bring a newborn to an authorized receiving facility during its hours of operation and to leave the newborn with personnel of the authorized receiving facility.

Copies of this proposed rulemaking may be obtained by contacting James Toscano, General Counsel, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024 or [www.dcregs.org](http://www.dcregs.org). All persons desiring to comment on the proposed rulemaking must submit their written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register.

## DEPARTMENT OF HUMAN SERVICES

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**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Human Services (Department), pursuant to the authority set forth in sections 7, 28, 30 and 31 of the Homeless Services Reform Act of 2005 ("HSRA"), effective October 22, 2005, D.C. Law 16-35, D.C. Official Code §§ 4-753.01, 4-755.01, 4-756.01 and 4-756.02 (2006 Supp.), Mayor's Order 2006-20, dated February 13, 2006, and Mayor's Order 2007-80, dated April 2, 2007, hereby gives notice of the adoption of the following new Chapter 76 of Title 29 of the District of Columbia Municipal Regulations, entitled "Homelessness Prevention and Rapid Re-Housing" ("HPRP" or "Program") as emergency and proposed rulemaking. The Department also gives notice of its intent to take final rulemaking action to adopt these regulations no earlier than fifteen (15) days of approval by the District of Columbia Council ("Council"), the expiration of the Council review period, or thirty (30) days from publication of this notice in the *D.C. Register*, whichever occurs last.

The purpose of the new chapter is to establish rules to administer the District of Columbia's Homelessness Prevention and Rapid Re-Housing Program. The purpose of the HPRP is to provide homelessness prevention assistance to households who would otherwise become homeless – many due to economic crisis – and to provide assistance to rapidly re-house persons who are homeless and have the capacity to quickly achieve stable housing independent of assistance from this Program.

Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), is necessary for the immediate preservation of the health, safety and welfare of District residents who are homeless or at imminent risk of becoming homeless. It is essential that the Department have the ability to provide HPRP assistance to District residents to assist individuals and families who are at imminent risk of homelessness to retain housing, and, to re-house individuals and families who have become homeless as quickly as possible. The emergency rulemaking is adopted and becomes effective upon publication in the *D.C. Register*. In addition, these rules were submitted to the Council and are awaiting Council approval, or expiration of the Council review period, as required by section 31 of the HSRA. The emergency rulemaking shall expire within 120 days from its effective date or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Add the following new Chapter 76 to Title 29 District of Columbia Municipal Regulations as follows:

**CHAPTER 76- HOMELESSNESS PREVENTION AND RAPID  
RE-HOUSING PROGRAM**

**7600 SCOPE**

- 7600.1 The purpose of the Homelessness Prevention and Rapid Re-Housing Program (“HPRP” or “Program”) is to provide homelessness prevention assistance to households who would otherwise become homeless – many due to economic crisis – and to provide assistance to rapidly re-house persons who are homeless and have the capacity to quickly achieve stable housing independent of HPRP assistance.
- 7600.2 The provisions of this chapter shall provide the application process, eligibility criteria, benefit determination, and appeal procedures for the Program.
- 7600.3 Nothing in these rules shall be interpreted to mean that HPRP assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.
- 7600.4 The Department of Human Services (Department) may execute contracts, grants, and other agreements as necessary to carry out the Program.

**7601 APPLICATION PROCESS**

- 7601.1 Each application shall be in writing on a form prescribed by the Department and signed by the applicant under penalty of perjury. If the applicant is married and living with a spouse, both spouses shall sign the application as an applicant unit (hereinafter “applicant”).
- 7601.2 An authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why the applicant cannot apply in person and the name and address of the person authorized to act on the applicant’s behalf.
- 7601.3 If requested by an applicant with a disability, or the authorized representative of an applicant with a disability, the Provider shall assist such applicant or authorized representative with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.
- 7601.4 The Department shall provide application forms and the Provider shall accept applications from each applicant who requests assistance.



- 7601.5 At the time of application, each applicant shall be provided with a clear, concise, written notice containing the applicant's rights and responsibilities and the Provider's responsibilities with respect to the Program. The Provider shall request that all applicants sign a document acknowledging receipt of this notice.
- 7601.6 As part of the application process, all applicants shall sign a release form authorizing the Provider to obtain or verify information necessary to process the application.
- 7601.7 In order to receive HPRP assistance, a household shall participate in an initial consultation with either the HPRP outreach team or the HPRP Provider to determine the appropriate type of assistance to meet their housing needs and shall receive an eligibility determination from an HPRP Provider.
- 7601.8 Each applicant shall cooperate fully in establishing his or her eligibility, including the basis of the applicant's homelessness or risk of homelessness, and the extent of the need. This shall include, but not be limited to, providing documentation or collateral proof of:
- (a) Household composition;
  - (b) Employment status and employment history;
  - (c) Income and assets;
  - (c) Household expenses;
  - (d) Facts and circumstances surrounding homelessness or risk of homelessness;
  - (e) Financial and other assets available or obtainable in the short-term to support housing stability; and
  - (f) Facts and circumstances surrounding financial and other barriers to housing stability.
- 7601.9 The Provider shall give to each applicant a written request specifying the information needed to complete the application and the Provider shall discuss with the applicant how to obtain the information. The application is complete when all required information is furnished.
- 7601.10 The Provider may use documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.

- 7601.11 The Provider shall complete the eligibility and assistance determination in as short a time as possible but not later than ten (10) calendar days after the date of a completed application. The Provider shall not be responsible for delays caused by:
- (a) The applicant's failure to supply information to document facts stated in the completed application without which eligibility or benefits cannot be determined;
  - (b) The inability to contact the applicant;
  - (c) Evidence of misrepresentation in the application;
  - (d) Delay by a third party from whom the Provider has requested information and over whom the Provider has no control; or
  - (e) Any other delay in receipt of information or documentation necessary to complete the application over which the Provider has no control.
- 7601.12 If an applicant is expected to lose their housing in less than ten (10) calendar days following the date of application, the Provider shall take all reasonable steps to process the application in an expedited manner in time to prevent the loss of housing if the applicant meets all eligibility criteria and a delay in processing the application is not caused by the failure of the applicant to provide documentation necessary for making an eligibility or assistance determination.
- 7601.13 The Provider shall create and maintain in the applicant's or participant's file a clear and detailed documentation of the Program's eligibility determination of each applicant, particularly as it relates to the household's eligibility for homelessness prevention assistance in accordance with section 7603.1(b), and the household's demonstration that it has no other housing options identified and that the household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing in accordance with section 7603.1(f).
- 7601.14 If an applicant is determined eligible for HPRP assistance, the Provider shall give to the applicant a Notice of Eligibility and Assistance Determination and include in this notice:
- (a) A clear statement of the eligibility determination;
  - (b) A clear and detailed statement of the assistance for which the applicant has been determined eligible, the amount of the assistance, if applicable, and the computation of assistance, if applicable;
  - (c) A clear statement of the HPRP requirement that all HPRP participants shall be re-evaluated and eligibility re-determined at least once every three

(3) months for any HPRP rental assistance or case management lasting longer than three (3) months.

- (d) Any information required from the recipient to authorize the Provider to proceed with the disbursement of the HPRP assistance to the appropriate vendor(s); and
- (e) A clear and complete statement of the client's right to appeal the eligibility or assistance determination through fair hearing and administrative review proceedings in accordance with section 7611, including the appropriate deadlines for instituting the appeal.

7601.15 If an applicant is determined eligible and given a Notice of Eligibility and Assistance Determination, but the specific computation of assistance cannot be completed until a later date, the provider shall reissue the Notice of Eligibility and Assistance Determination with the updated computation worksheet and a confirmation of assistance when all information necessary to complete it has been received.

7601.16 If an applicant is determined ineligible for HPRP assistance, the Provider shall give to the applicant a Notice of Eligibility and Assistance Determination and include in this notice:

- (a) A clear statement of the denial of eligibility;
- (b) A clear statement of the factual basis for the denial;
- (c) A reference to the statute, regulation, or policy pursuant to which denial was made; and
- (d) A clear and complete statement of the client's right to appeal the denial through fair hearing and administrative review proceedings pursuant to section 7611, including the appropriate deadlines for instituting the appeal.

7601.17 An application shall be considered abandoned if the applicant has not obtained and provided to the Provider the required information for eligibility and assistance determination within sixty (60) calendar days of the date of application.

## **7602 APPLICANT UNIT**

7602.1 The applicant unit shall be composed of each individual who lives in the same household and whose needs, assets, and income are combined to determine eligibility.

7602.2 The applicant unit shall include:

- (a) Persons related by full or half blood;
- (b) Persons related by legal adoption;
- (c) Persons related by marriage, including stepchildren and unmarried parents of a common child who live together; or
- (d) Persons with legal responsibility for an unrelated minor child, or an unrelated adult with a disability.

7602.3 The applicant unit may include any person not included by section 7602.2, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit.

7602.4 A person temporarily away from home due to employment, hospitalization, vacation, or a visit shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household if he or she returns to the home on occasional weekends, holidays and during the summer vacations.

7602.5 An applicant unit may be comprised of a single individual.

7602.6 The name of a non-household member on a rental lease shall have no effect on eligibility, except that receipt of benefits under sections 7607 through 7610 shall be conditioned on:

- (a) The applicant documenting that he or she is responsible for the payment; and
- (b) Both the applicant and the landlord agreeing to change the lease to reflect only the applicant's name, unless the name of the non-household member is a co-signor required by the landlord.

### **7603 ELIGIBILITY CRITERIA**

7603.1 An applicant unit, whether an individual or family, shall be eligible to receive HPRP assistance if the applicant unit:

- (a) Is currently homeless, because the applicant unit:
  - (1) Lacks a fixed, regular residence that provides safe housing, and lacks the financial means to acquire such a residence immediately, including victims of domestic violence who cannot remain in their present housing for safety reasons; and

- (2) Has a primary nighttime residence that is:
  - (A) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations;
  - (B) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or
  - (C) A hospital or other institution for the last one hundred and eighty (180) days or less, but who had, immediately prior to entry into the hospital or institution, a primary nighttime residence that meets the requirements of subparagraph (A) or (B) of this subparagraph; or
- (b) Is housed but is at imminent risk of becoming homeless because the applicant:
  - (1) Faces imminent loss of current housing;
  - (2) Lacks the financial means to retain current housing or obtain alternate housing, due to:
    - (A) A sudden and significant loss of income;
    - (B) Significant financial barriers to housing, including significant medical debt, credit issues; or
    - (C) Other significant but temporary or situational financial crisis;
  - (3) Lacks the support network to retain current housing or obtain alternate housing; and
  - (4) Has no other housing options identified.
- (c) Is a resident of the District of Columbia as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03);
- (d) Is living in the District of Columbia at the time of application. For purposes of this section, the applicant household shall be considered living in the District of Columbia if the household:

- (1) Is homeless, physically present in the District, and not a resident of another state; or
  - (2) Is maintaining a home in the District as his or her principal residence.
- (e) Has a combined current gross income, as determined in accordance with sections 7603.10 and 7603.11, in the thirty (30) day period immediately preceding the date of application, at or below fifty (50) percent of the current Area Median Income (AMI) for the District of Columbia as determined annually by the United States Department of Housing and Urban Development (HUD).
- (f) Demonstrates that the applicant household has no other available resources for retaining or obtaining stable housing, including resources available from family, friends, or a community resource or demonstrates the presence of additional challenges that are associated with an increased risk of homelessness, including mental or physical health issues, substance abuse, recent homelessness, child welfare involvement, recent institutional care, or other such challenges, and which the applicant can demonstrate may increase their risk of homelessness. Household assets, as set forth in section 7603.13, shall be taken into account in accordance with section 7603.12, in determining whether a household has other available financial resources sufficient to obtain or maintain housing under this section.
- (g) Demonstrates that there is a reasonable expectation that the applicant will have the capacity to obtain or retain stable housing within an eighteen (18) month period or less, particularly for applicants seeking either rental assistance or payment of rental or utility arrearages. Failure to demonstrate that the household will be reasonably likely to sustain stable housing following HPRP assistance may result in a denial of eligibility for some or all HPRP benefits.

7603.2 Those HPRP applicants that have received Emergency Rental Assistance Program (ERAP) benefits within the last eighteen (18) months, whether applying for the same or a different financial benefit as that received under ERAP, shall be required to credibly demonstrate why the household believes it can meet the section 7603.1(g) eligibility requirement and not need additional assistance to obtain or retain housing.

7603.3 An HPRP applicant or HPRP participant determined eligible under this section shall be subject to a re-evaluation and a re-determination of eligibility at least once every three (3) months for any HPRP rental assistance or case management lasting longer than three (3) months.

- 7603.4 If two unrelated individuals are joint parties to a lease, the HPRP Provider shall consider total household income to determine eligibility (i.e., either the whole household is eligible for assistance, or the whole household is not).
- 7603.5 An applicant unit shall not be eligible for HPRP rental assistance if the household is receiving rental assistance for the same time period through another federal, state or local housing subsidy program.
- 7603.6 An applicant unit shall not be eligible for HPRP utility assistance if the household is receiving a rental subsidy for the same time period through another federal, state, or local housing subsidy program that provides a utility allowance or the equivalent.
- 7603.7 An adult applicant shall be denied HPRP assistance if the household's housing crisis is the result of his or her refusal without "good cause" to accept employment or training for employment.
- 7603.8 An applicant shall be considered to have refused employment or training if the applicant:
- (a) Voluntarily quit employment or a bona fide training program within three (3) months prior to application; or
  - (b) Rejected an employment or a bona fide training program opportunity within the three (3) months prior to the application.
- 7603.9 "Good Cause" reasons for voluntarily quitting a job or not participating in an employment training program include circumstances beyond the individual's control, such as, but not limited to, the following, when the applicant can show, with reliable or credible information, that:
- (a) Wages are below the minimum wage;
  - (b) The applicant is physically or mentally unable to perform the work or gain access to the worksite;
  - (c) Working conditions violate health, safety, or worker's compensation regulations and present a substantial risk to health or safety;
  - (d) The employer discriminated against the applicant based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business in violation of D.C. Official Code § 2-1401.01 *et seq.* (D.C. Law 2-38, effective December 13, 1977);

- (e) The requirements of the job would be contrary to his or her religious beliefs;
- (f) There existed a household emergency (including domestic violence);
- (g) The resignation is recognized by the employer as retirement;
- (h) Child care, which is necessary for the adult applicant to accept work or training, is not available; or
- (i) The applicant could not maintain work or participate in a training program because it was necessary for the applicant to take care of a family member who is either ill or has a disability.

7603.10 Current gross income for purposes of section 7603.1(e) shall include the following types of income, except that any income recently terminated shall not be included:

- (a) The full amount, before any payroll deduction, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services;
- (b) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (c) Interest, dividends, and other net income of any kind from real or personal property greater than \$1,000 per year. Expenditures for amortization of capital indebtedness shall be used as deduction in determining net income. All allowance for depreciation is permitted only as authorized in paragraph (a)(2) of this definition. Net income from assets will be included in Annual Income for the purposes of this title if net income from assets exceeds \$1,000. Notwithstanding this threshold, all assets with a value greater than \$15,000 must be reported annually. Regardless of the value of the assets, imputed income from assets will not be included in Annual Income.
- (d) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or



death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

- (e) Payments in lieu of earnings such as unemployment and disability compensation, worker's compensation and severance pay;
- (f) Welfare Assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of the following:
  - (1) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
  - (2) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated shall be the amount resulting from one application of the percentage;
- (g) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;
- (h) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit; and
- (i) Any earned income tax credit to the extent it exceeds income tax liability.

7603.11 Current gross income does not include such temporary, nonrecurring or sporadic income as the following:

- (a) Casual, sporadic or irregular gifts;
- (b) Amounts that are specifically for or in reimbursement of the cost of medical expenses;
- (c) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
- (d) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran,

for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans not used for the above purposes that are available for subsistence are to be included in income; and

- (e) The hazardous duty pay to a family member in the Armed Forces away from home and exposed to hostile fire.
- (f) Income from employment of children (including foster children) under the age of eighteen (18) years;
- (g) Payments received for the care of foster children;
- (h) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including:
  - (1) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. §§ 2011-2029);
  - (2) Relocation payments made under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4621-4638);
  - (3) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. §§ 5044(f), 5058);
  - (4) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. §§ 8621-8629); and
  - (5) Payments received from the Job Training Partnership Act (29 U.S.C. 1552(b)).

7603. 12 Household assets shall be taken into account in determining whether a household has other available financial resources sufficient to obtain or maintain housing under section 7603.1(f), as follows:

- (a) If a household's current gross income, determined pursuant to section 7603.1(e), plus the household's combined assets, as set forth in section 7603.6, exceeds fifty percent (50%) of the current Area Median Income (AMI) for the District of Columbia as determined annually by HUD, the household is not eligible for HPRP assistance;

- (b) If thirty percent (30%) of a household's monthly income, based on the current gross income determined in accordance with section 7603.1(e), plus one twelfth (1/12) of the household's combined assets, as set forth in section 7603.6, exceeds the amount of the specific HPRP assistance sought, e.g. security deposit or rental assistance, or the respective cap, whichever is less, the household is not eligible for HPRP assistance; and
- (c) If thirty percent (30%) of a household's monthly income, based on the current gross income determined in accordance with section 7603.1(e), plus one twelfth (1/12) of the household's combined assets, as set forth in section 7603.6, is less than the amount of the specific HPRP assistance sought, e.g. security deposit or rental assistance, the household shall only be eligible for HPRP assistance in the amount of the difference between the amount of the HPRP assistance sought or the respective HPRP cap, whichever is less.

7603. 13 An asset is cash or items that could be converted to cash quickly and includes the real or personal property and investments that a household may possess, including assets that are owned by more than one person, but allow unrestricted access to the applicant. Assets include:

- (a) Amounts in checking and saving bank accounts.
- (b) Stocks, bonds, savings certificates, money market funds, and other investment accounts.
- (c) The cash value of trusts that may be withdrawn by the household.
- (d) IRA, Keogh and similar retirement savings accounts, even when early withdrawal will result in a penalty.
- (e) Lump sum receipts of cash received and accessible by household, such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.

#### **7604 COMPUTATION OF HPRP ASSISTANCE**

7604.1 The following shall apply to determinations of HPRP benefits.

7604.2 Computation of the HPRP applicant's or participant's contribution for security deposit and first month rent (section 7607), utility arrearage and utility deposit (section 7608), and rental arrearage (section 7610) shall be calculated based on the net income and assets available to the applicant unit within the last thirty (30) days prior to application and may taken into account necessary and reasonable expenditures incurred during that time period.

- 7604.3 Computation of the HPRP applicant's or participant's contribution for rental assistance (section 7609) shall be made in accordance with section 7609.3.
- 7605 HOMELESSNESS PREVENTION AND RAPID RE-HOUSING ASSISTANCE**
- 7605.1 HPRP assistance may include those categories of assistance specified in sections 7606, 7607, 7608, 7609 and 7610.
- 7605.2 HPRP assistance shall be "needs-based," meaning that the assistance provided shall be the minimum amount as determined by the Provider needed to prevent the HPRP applicant or participant from becoming homeless or returning to homelessness in the near term.
- 7605.3 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.
- 7605.4 In addition to any dollar caps on benefits set forth in this chapter, the total HPRP financial assistance to a participating household shall not exceed eighteen (18) months. The following HPRP benefits shall count toward the eighteen (18) month maximum allowed: rental arrearages, utility arrearages, security deposit, utility deposit, first month's rent, and rental assistance. A HPRP payment provided for a part or the whole of any month shall be counted as one (1) month's assistance for purposes of calculating the eighteen (18) month limit on HPRP assistance. Similarly, any ERAP benefits received by the applicant unit in the eighteen (18) months preceding the application to HPRP shall also count toward the HPRP eighteen (18) month limit.
- 7605.5 The Provider shall not make benefit payments directly to the applicant household, but only to third parties, such as a landlord or utility company.
- 7605.6 Receipt of HPRP assistance under sections 7607, 7609, and 7610 is conditioned on the applicant being able to demonstrate that the applicant is a leaseholder whose name is on the lease and that the rental unit meets HUD's "Rent Reasonableness" standard. HUD defines Rent Reasonableness to mean that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.
- 7605.7 HPRP assistance under sections 7607, 7608, 7609, and 7610 shall be provided only for housing units located within the District of Columbia. Any unit constructed before 1978 in which a child under the age of six (6) will be residing must comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, and implementing regulation, 24 C.F.R. part 35, subparts A, B, M, and R.

7605.8 An HPRP provider may not approve or issue an HPRP benefit for a housing unit that is owned by the HPRP provider, its parent, subsidiary or an affiliated organization of the HPRP Provider.

7605.9 Only in the rare circumstance where payment is required by a vendor or a controlling government authority, including but not limited to a court or federal marshals, may the benefit payment be made in the form of cash. In all other cases, all HPRP assistance payments shall be in the form of non-cash direct vendor payments.

7605.10 HPRP benefits approved in accordance with sections 7607, 7608, 7609, or 7610 that are not utilized within sixty (60) days after approval may be forfeited absent a showing that the applicant or recipient has made reasonable efforts to use the assistance or good cause as to why the applicant or recipient could not expend the benefits.

## **7606 HOUSING RELOCATION AND HOUSING STABILIZATION SERVICES**

7606.1 HPRP assistance may be provided through housing relocation and stabilization services, which may include:

- (a) Outreach and engagement activities to make persons aware of the availability of HPRP and similar services;
- (b) Assessment and case management services related to meeting the housing stabilization needs of program participants;
- (c) Housing search and placement services, including tenant counseling;
- (d) Legal services related to the HPRP program goals; and
- (e) Referral to services that can assist with securing utilities, making moving arrangements, engaging representative payee services, credit counseling and credit repair services, and moving assistance.

## **7607 SECURITY DEPOSIT AND FIRST MONTH'S RENT**

7607.1 HPRP assistance may be provided to pay for security deposits for eligible program participants.

7607.2 The maximum HPRP payment for a security deposit shall be the actual amount of the deposit, which may not exceed more than the cost of one (1) month's unsubsidized rent, which must meet HUD's Rent Reasonableness standard, up to \$1,500 for an individual and up to \$2,200 for a family.

7607.3 The security or damage deposit payment shall be made directly to the landlord.

7607.4 HPRP assistance may be provided to pay the first month's rent for an eligible applicant where:

- (a) The first month's rent must be paid in conjunction with the security deposit;
- (b) The applicant unit has no other means available for paying the first month's rent at the time it is required; or
- (c) Neither short nor medium term HPRP rental assistance is necessary to stabilize the housing of the applicant unit.

7607.5 The maximum HPRP payment for first month's rent shall not exceed the actual amount of one (1) month's unsubsidized rent, which must meet HUD's Rent Reasonableness standard, up to \$1,500 for an individual and up to \$2,200 for a family.

7607.6 Any applicant unit coming directly from a transitional housing program that requires an escrow account for purposes of obtaining permanent housing shall demonstrate why they do not have sufficient resources available for security deposit or first month's rent.

## **7608 UTILITY ARREARAGE AND UTILITY DEPOSIT**

7608.1 HPRP assistance may be provided to pay for utility arrearages.

7608.2 The HPRP assistance for utility arrearages shall not exceed \$2,500 for an individual or \$3,500 for a family. The HPRP program shall make the determination regarding the appropriate amount of the HPRP benefit in accordance with section 7605.2 and other provisions of this chapter. The maximum amounts provided in this section do not entitle an eligible household to the maximum allowed benefit, nor require the Provider to provide the maximum amount in HPRP assistance.

7608.3 HPRP assistance may be provided to pay a utility deposit to ensure that an eligible household receives utility services. Provision of a utility deposit as an HPRP benefit will be determined on a case-by-case basis by the HPRP Provider, taking into consideration the unique circumstances of the eligible household that makes a utility deposit necessary.

## **7609 RENTAL ASSISTANCE**

7609.1 HPRP rental assistance is solely for the purpose of assisting eligible households to quickly achieve housing stability by assisting them to remain in their existing rental units or to obtain and remain in a new rental unit.

- 7609.2 As a condition of receipt of HPRP rental assistance, the applicant shall agree to:
- (a) Enter into a lease and comply with the terms of such lease;
  - (b) Contribute up to thirty percent (30%) of their adjusted annual income toward the cost for housing, in accordance with section 7609.3;
  - (c) Accept a unit that meets the program unit criteria in accordance with section 7609.4; and;
  - (d) If applicable, apply for all public benefits and housing assistance for which the applicant is eligible, including applying for housing assistance from the District of Columbia Housing Authority.
- 7609.3 Each household shall contribute toward the cost for housing up to thirty percent (30%) of their adjusted annual income, determined in accordance with the District of Columbia Housing Choice Voucher Program (HCVP) regulations found at 14 DCMR 6200. The HPRP rental assistance shall be the difference in the cost of housing. For purposes of this section, the cost of housing shall include the cost of utilities, as determined in accordance with the HCVP regulations found at 14 DCMR 6200.
- 7609.4 Receipt of HPRP rental assistance is conditioned on living in a rental unit that passes a housing inspection and meets HUD's "Rent Reasonableness" standard. HUD defines Rent Reasonableness to mean that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.
- 7609.5 The initial rental assistance benefit (short-term rental assistance) shall not exceed the equivalent of rental costs accrued over a period of three (3) months.
- 7609.6 If a household receiving short-term rental assistance needs additional rental assistance to achieve housing stability, the Program shall evaluate the household for eligibility to receive additional months of medium-term rental assistance in accordance with section 7609.7. Upon determining the participant's eligibility for additional rental assistance, the Program shall provide the household with a Notice of Eligibility and Assistance Determination in accordance with section 7601.14 or section 7601.16.
- 7609.7 For households receiving medium-term rental assistance, the HPRP Program shall evaluate the household for eligibility at least once every three months to receive up to three (3) additional months of medium-term rental assistance, for no more than a total of fifteen (15) months of medium-term rental assistance. Upon

determining the participant's eligibility for additional rental assistance, the Program shall provide the household with a Notice of Eligibility and Assistance Determination in accordance with section 7601.14 or section 7601.16.

- 7609.8 Households receiving medium-term rental assistance shall demonstrate their ability to eventually pay the full rental amount by paying an increasing share of the rental payment no less than at three month intervals coinciding with the three (3) month household recertification requirement set forth in section 7609.7. For purposes of this section, the household's share shall not exceed thirty percent (30%) of their adjusted annual income, determined in accordance with section 7609.3.
- 7609.9 Households unable to meet the requirement to pay an increased share of the rental payment at the three month recertification shall be evaluated on a case-by-case basis to determine their continued eligibility based on their ability to demonstrate capacity to meet the HPRP housing stability requirement.
- 7609.10 Households receiving short or medium-term rental assistance shall be required to report any change in the household's monthly income as soon as the change occurs.
- 7609.11 Upon written notification by the household of a change in the household's monthly income, the HPRP Provider shall determine if there is a need to recalculate the amount of the household's housing cost contribution, based on the following:
- (a) If the household is reporting a decrease in monthly income of \$50.00 or more, a recalculation shall be conducted.
  - (b) If the recalculation pursuant to subsection (a) results in an increase in the amount of HPRP rental assistance, the change shall be effective the first day of the month (or the next day that rent is due) following completion of the calculation. The recalculation shall be completed within five (5) business days of receipt of written notice by the household of the decrease in household income and any documentation necessary for the Provider's recalculation.
  - (c) If the household is reporting an increase in monthly income of \$100.00 or more, a recalculation shall be conducted.
  - (d) If the recalculation pursuant to subsection (c) results in a decrease in the amount of HPRP rental assistance, the change shall be effective the first of the month (or on the day that rent is next due if different than the first of the month) following the month in which notice of the change in accordance with section 7609.12 is provided to the household, except that if the next day rent is due is less than fifteen (15) calendar days from the



date the notice is either hand delivered or postmarked, the change in the HPRP rental assistance shall be effective the second month (or the second date upon which rent is due) following the month in which notice of the change made in accordance with section 7609.12 is provided to the household.

- (e) Notice of a change in assistance pursuant to this section shall be made in accordance with section 7609.12.

7609.12 When a Provider calculates a change in HPRP rental assistance, pursuant to either a recertification under section 7609.6 or 7609.7 or as a result of a reported change in income pursuant to section 7609.10, the Provider shall give to the participant household a Notice of Change in HPRP Rental Assistance. This notice shall include:

- (a) A clear statement of the factual basis for the change in rental assistance;
- (b) A reference to the regulation or policy pursuant to which the change was made;
- (c) A clear and detailed statement of the household's current HPRP rental assistance and the household's current share of the housing costs;
- (d) A clear and detailed computation of the new amount of HPRP rental assistance and the new amount of the household's share of the housing costs;
- (e) The effective date of the new amount of rental assistance in accordance with section 7609.11(b) or 7609.11(d), whichever is applicable
- (f) A clear and complete statement of the client's right to a reconsideration of the recalculation by the Department or the Department's designee, if such reconsideration is requested within ten (10) calendar days of receipt of the Notice. A reconsideration shall be completed with five (5) business days of receipt by the designated reviewer of the household's request for a reconsideration. The five (5) business day timeframe may be tolled if the reviewer has requested documentation necessary to the review and receipt of such documentation is pending and not within the control of the reviewer.

7609.13 Notice required by section 7609.12 shall be either hand-delivered to a member of the applicant household or mailed to the household by 1<sup>st</sup> class mail within 24 hours of the Provider's calculation of the change in the household's rental assistance share. The date from which the timeliness of the notice is measured is either the date of hand-delivery or, if mailed, the date the notice is postmarked.

7609.14 The monthly HPRP rental assistance that may be issued per month shall not exceed \$1,500 per month for individuals or \$2,200 per month for families.

**7610 RENTAL ARREARAGES**

7610.1 HPRP assistance in the form of payment of rent arrearages may be provided to an eligible household to prevent homelessness if each of the following conditions is met:

- (a) Eviction is imminent and documented by a Landlord and Tenant Court summons or referral, Writ of Restitution, Notice to Vacate or Quit, or correspondence from the landlord or his or her agent documenting that the applicant is a tenant and has a current rent arrearage of at least thirty (30) calendar days past due and that the landlord or his or her agent intends to take action to evict the tenant;
- (b) Payment of the rent arrearage is necessary and will enable the applicant household to remain in the housing unit for which the arrears are being paid or payment of rent arrearages owed to a previous landlord is necessary for the household to obtain another unit.
- (c) The cost of the rental unit and the related rental arrearage complies with HUD's Rent Reasonable standard;
- (d) The applicant can demonstrate that the household has the capacity to pay future rental payments. If the applicant household cannot demonstrate ability to pay future rental payments, the HPRP may condition eligibility for receipt of rental arrearage assistance on the household identifying and relocating to another rental unit with a rental payment the household can demonstrate ability to pay;
- (e) The arrearage must be that of the applicant. If the lease or rental agreement is not in the applicant's name, he or she must provide documentation that he or she is responsible for the arrearage. Both the applicant and the landlord must agree to change the lease to the applicant's name; and
- (f) Arrearage for any period caused by a rent strike may be paid only if any escrow money is first applied to the arrearage and the applicant agrees to resume regular payment of rent.

7610.2 The arrearage that may be paid with HPRP Rental Arrearage assistance may not exceed six (6) months of rental arrearages.

7610.3 In addition to the limitation set forth in section 7610.2, the HPRP assistance for rental arrearages shall not exceed \$5,000 for an individual or \$6,500 for a family.

The Provider shall make the determination regarding the appropriate amount of the HPRP benefit in accordance with section 7605.2 and other provisions of this chapter. The maximum amounts provided in this section do not entitle an eligible household to the maximum allowed benefit, nor require the Provider to provide the maximum amount in HPRP assistance.

## **7611 FAIR HEARING AND ADMINISTRATIVE REVIEW**

7611.1 An applicant or participating HPRP household shall have ninety (90) calendar days following the receipt of a notice described in section 7601.14 or 7601.16 to request a fair hearing, in accordance with the hearing provisions of section 26 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35, D.C. Official Code § 4-764.41), for the action that is the subject of the notice.

7611.2 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for an administrative review in accordance with section 27 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35, D.C. Official Code § 4-764.42), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal in time to resolve the housing emergency and prevent the eviction.

## **7699 DEFINITIONS**

The following terms shall have the meaning ascribed:

**Authorized Representative** – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the circumstances of the applicant to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

**Department** – the District of Columbia Department of Human Services or its designated agent.

**Equity** – current market value of property less any lien indebtedness on the property and less reasonable expenses necessary to liquidate the property.

**Household Member with a Disability** – a member of the applicant unit who is disabled, as documented by medical evidence provided by a qualified professional or by participation in a program which conditions its eligibility on the documentation of disability.

**Housing Stability** – the ability to pay housing costs, including rent and utilities, necessary to retain housing without HPRP assistance.

**Joint Legal Responsibility** – the individual household members are named on the deed (as tenants in common or joint tenants), or rental lease.

**Minor child** – a child, including those by adoption, eighteen (18) years of age or younger.

**SSI** – the Supplemental Security Income for the Aged, Blind, and Disabled cash assistance program authorized by Title XVI of the Social Security Act of 1935, as amended (42 U.S.C. §§ 1381 to 1383f).

**Provider** – an organization that receives Homelessness Prevention and Rapid Re-Housing funds and is authorized to administer and deliver Homelessness Prevention and Rapid Re-Housing services.

**Rent Reasonableness Standard** – Rent Reasonableness is defined by the United States Department of Housing and Urban Development to mean that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.

**Rental Arrearages** – amount due in unpaid rent, which may include reasonable late fees.

**Rental Payment** – a regular payment made by a tenant to an owner or landlord for the right to occupy or use property.

**Security Deposit (also Damage Deposit)** – a sum of money paid in advance that is required by the owner or landlord for leasing property as security against the tenant's failure to fulfill the lease or security to cover damage to the rental premises.

**Vendor** – provider of a service or product, including but not limited to landlords.

**Verification** – documentation or collateral proof used to confirm the validity of an applicant's circumstances.

All persons who desire to comment on these proposed rules should submit their comments in writing to Clarence H. Carter, Director, Department of Human Services, 64 New York Avenue, N.E., Washington, D.C. 20002, **Attn:** Mr. Fred Swan, Administrator, Family Services Administration. All comments must be received by the Department of Human Services not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.